

SURVIVING GENTRIFICATION AND SEGREGATION

COURTNEY LAUREN ANDERSON*

I. INTRODUCTION

The connection between health and housing cannot be overstated. Highlighting the health disparities caused by both illegal and legal housing laws and policies is an important part of understanding how environmental factors affect health, as well as advocating for the law to be used to mitigate health disparities rather than to worsen them. Past housing laws and present housing policies and practices have segregated neighborhoods by race. These practices, together with segregation and racism, have resulted in adverse health outcomes for people of color. The recognition of housing policies in health is an important component to creating health equity.

Several policies initiated and supported by the government and private entities have resulted in extreme segregation in the United States. I will give brief overviews of redlining and restrictive covenants to illustrate their negative effects. After providing a historical overview of these laws, I will describe present housing laws and practices that result in segregation and, ultimately, health disparities. This includes the Fair Housing Act, Low-Income Housing Tax Credit, annexation and municipal incorporation, and gentrification. As the Fair Housing Act was specifically enacted to combat segregation and housing discrimination, we will review the purpose of the Act and how it has not been realized. I believe that the concept and fallout of disparate impact are integral to understanding the implications. Today, most discrimination falls into this category, so we will talk about the current landscape of housing policies to reveal why – post-civil rights legislation – we continue to see segregated cities. Furthermore, gentrification presents challenges to unpacking housing discrimination and maintaining and creating affordable housing. Laws designed to expand or contract the borders of municipalities can present very few barriers to deciding to selectively annex or exclude certain neighborhoods. Despite their legality, the aforementioned measures can disadvantage people of color by increasing segregation and displacement, worsening their health outcomes. Finally, I will provide more detail about the danger of health disparities to underscore the importance of including housing laws in the broader public health agenda.

II. RESTRICTIVE COVENANTS AND REDLINING

Restrictive covenants played a significant role in racial segregation. “A restrictive covenant is ‘a private agreement . . . that restricts the use or occupancy of real property’”¹ The proliferation of these covenants was instituted by white communities in response to the migration of African Americans from the South in the early 1900s. These covenants were designed to limit the transfer and sale

* Associate Professor of Law at Georgia State University College of Law.

1. *Grace Fellowship Church, Inc. v. Harned*, 5 N.E.3d 1108, 1113 (11th Cir. 2013).

of property to people who were not white.² The federal government in 1934 endorsed such segregation by refusing to underwrite mortgages for homes unless a racial covenant was in place. Then, following activism from Black Americans, the United States Supreme Court unanimously ruled that these covenants were unenforceable in 1948. The legality of the inclusion of these prohibitions in recording instruments was not challenged until that year,³ and it was not until 1962 that the Court ruled that racially restrictive covenants were unconstitutional.⁴

Redlining is the practice in which a bank or financial institution denies or increases the cost of banking to consumers based on the racial makeup of their neighborhood.⁵ The Home Owners' Loan Corporation was created to help prevent foreclosures and increase homeownership in response to the Great Depression.⁶ Communities of color were explicitly harmed by the redlining practices of this entity.⁷ It created maps to determine where lending for residences would be permitted.⁸ On these maps, some neighborhoods were colored and labeled "hazardous" for lending because of the presence of African Americans in the neighborhood and received a grade of "D."⁹ Neighborhoods that received the highest grade of A were colored green on the maps and considered "best."¹⁰ As a result of redlining, Black families were prohibited from receiving a loan to purchase homes in the neighborhoods where they lived.¹¹ Neighborhoods comprised of mostly white families were likely to be deemed "best" and colored green.¹² The Fair Housing Act of 1968 prohibits redlining,¹³ but the effects on homeownership are long-lasting.¹⁴ As a result of entrenching racial discrimination into the law, the typical homeowner in a redlined neighborhood gained 52% less in personal wealth generated by property value increases than one in a

2. RICHARD BROOKS & CAROL ROSE, *SAVING THE NEIGHBORHOOD: RACIALLY RESTRICTIVE COVENANTS, LAW, AND SOCIAL NORMS* 2-6 (2013).

3. *Id.* at 3.

4. *See* *Shelly v. Kraemer*, 334 U.S. 1 (1948).

5. Khristopher J. Brooks, *Redlining's Legacy: Maps Are Gone, but the Problem Hasn't Disappeared*, CBS NEWS (June 12, 2020), <https://www.cbsnews.com/news/redlining-what-is-history-mike-bloomberg-comments/> [<https://perma.cc/HG34-BTE8>].

6. BRUCE MITCHELL & JUAN FRANCO, NAT'L CMTY. REINVESTMENT COAL., *HOLC "REDLINING" MAPS: THE PERSISTENT STRUCTURE OF SEGREGATION AND ECONOMIC INEQUALITY* 6 (2018), https://ncrc.org/wp-content/uploads/dlm_uploads/2018/02/NCRC-Research-HOLC-10.pdf [<https://perma.cc/JPW2-W3TC>].

7. *Id.* at 4.

8. *Id.*

9. *Id.* at 8.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.* at 5.

14. *Id.* at 2.

neighborhood deemed “best” over the last forty years.¹⁵ The implications of these now illegal practices are still present today. Furthermore, there are ongoing practices that perpetuate segregation. Laws designed to create housing equity have failed to produce the integration and justice required to undo years of explicit discrimination.

III. THE FAIR HOUSING ACT AND OTHER HOUSING LAWS

Section 801 of the Fair Housing Act (the “FHA” or the “Act”) declares, “[i]t is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.”¹⁶ This Act was the culmination of racial justice protests, resistance to discrimination and violence, and other aspects of the Civil Rights Movement. The Act also states that “[a]ll executive departments and agencies shall administer their programs and activities relating to housing and urban development . . . in a manner affirmatively to further the purposes of [the FHA].”¹⁷ Although this clause is ambitious and altruistic, it lacks the requisite enforcement mechanisms to bring about real change. Also, it aligns with the overall intent of the FHA, which is to construct social and economic integration in neighborhoods that were formerly divided by racial segregation. The ongoing concentration of poverty in racially isolated neighborhoods shows that this goal has not been achieved.¹⁸ The low rates of Black homeownership, when compared to whites, further illustrates present housing injustices.¹⁹

Low Income Housing Tax Credit (“LIHTC”) is responsible for creating the majority of affordable housing in the United States. Private developers compete for LIHTC, which provides tax subsidies in exchange for these developers creating housing that is required to remain affordable for at least thirty years. However, the placement of LIHTC units can also disproportionately and adversely affect people of color. This is because these units are more often than not erected in places that are primarily Black and low-income. Until a program that creates a majority of affordable housing in the United States can do so without inherent racial bias, the health of people who are adversely affected by this practice will continue to decline. LIHTC is not the only well-meaning policy that has consequences that negatively impact communities of color. Annexation is a policy designed to provide municipalities with the ability to define their own

15. Dana Anderson, *Redlining’s Legacy of Inequality: \$212,000 Less Home Equity, Low Homeownership Rates for Black Families*, REDFIN (June 11, 2020), <https://www.redfin.com/news/redlining-real-estate-racial-wealth-gap/> [https://perma.cc/M6H5-2KPJ].

16. 42 U.S.C. § 3601 (2020).

17. 42 U.S.C. § 3608 (2020).

18. See generally JOHN ICELAND ET AL., U.S. CENSUS BUREAU, RACIAL AND ETHNIC RESIDENTIAL SEGREGATION IN THE UNITED STATES: 1980-2000, at 3-4 (2002), <https://www.census.gov/prod/2002pubs/censr-3.pdf> [https://perma.cc/BGN7-HT7P].

19. U.S. CENSUS BUREAU, QUARTERLY RESIDENTIAL VACANCIES AND HOMEOWNERSHIP, FOURTH QUARTER 2020, at 9 (2021), <https://www.census.gov/housing/hvs/files/currenthvspress.pdf> [https://perma.cc/8AJT-48SE].

boundaries. However, the procedures required for this are not consistent among the states. This next Section explains the variety of annexation statutes.

IV. ANNEXATION

This Section demonstrates the extreme value of annexation for urban municipal corporations and helps explain the correlation observed in “defensive incorporation” by fringe communities. Urban sprawl and the phenomenon of “White Flight” fit perfectly with this constant struggle for urban municipal elasticity. So, how do different states approach the issue of annexation? Russel M. Smith identifies three primary approaches to annexation procedures and limitations: (1) “only allow annexations to occur through a state legislative approval process,” (2) “require the area being annexed to approve the annexation,” and (3) “allow municipalities to annex unilaterally.”²⁰ The first of these seems to conform to a generally *positive state* model of land-use regulation. The second conforms to a *civic republican* model, and the third conforms to a *libertarian* model. But, do these models actually correlate in practice as legislative designs? This Section focuses on answering this question with respect to four states: North Carolina, Georgia, California, and Illinois; each, respectively, ranges from examples of more state involvement to less with regard to the powers allotted to municipal discretion as entities of their respective states.

1. North Carolina: An Example of More State Involvement

In *City of Greensboro v. Guilford County Board of Elections*, the United States District Court for the Middle District of North Carolina notes that under the North Carolina Constitution “municipalities have no inherent powers; they have only such powers as are delegated to them by legislative enactment.”²¹ However, as the court articulates, the General Assembly is not at liberty to exercise that power “in a manner prohibited by the North Carolina Constitution . . . subject to the Equal Protection Clause of the United States Constitution.”²² The court ruled that an act that withdrew the statutory right to petition for a referendum from the voters of Greensboro but left alone the rights of voters in other municipalities of the State, had no rational basis for the distinction, and was unconstitutional.²³

In North Carolina, the process of municipal incorporation is statutorily tethered to legislative consent: “no area may incorporate without the approval of

20. Russell M. Smith, *City Limits?: The Impact of Annexation on the Frequency of Municipal Incorporation in North Carolina*, 51 SE. GEOGRAPHER 422, 427 (2011).

21. *City of Greensboro v. Guilford County Bd. of Elections*, 120 F. Supp. 3d 479, 486 (M.D.N.C. 2015) (quoting *In re Ordinance of Annexation No. 1977-4*, 249 S.E.2d 698, 707 (N.C. 1978)).

22. *Id.*

23. *Id.* at 492.

the North Carolina General Assembly.”²⁴ The civic republican focus on local impact, as well as the bureaucratic “red-tape” of positive state influence on both sides of the issue, gives communities ample time and discretion to proactively and reactively incorporate or petition for annexation.

2. *Georgia, California, and Illinois: Examples of Less State Involvement*

Other states like Georgia, California, and Illinois provide greater constitutional authority for municipalities outside of the limits of statutory legislation. While Georgia’s Constitution articulates the General Assembly’s responsibility to govern municipal limitations, it also gives the General Assembly “the authority to delegate its power so that matters pertaining to municipalities may be dealt with without the necessity of action by the General Assembly.”²⁵

Local governance in California consists of an amalgamation of localist, regionalist, and civic republican models of regulation. “In April of 1954, the Lakewood communities, under threat of annexation from the City of Long Beach, incorporated as the state’s 16th-largest city and the largest community in the United States ever to incorporate as a sovereign city.”²⁶ The city then collaborated with the county government and private service providers to “deliver public administration in a cost effective manner.”²⁷ As Frank Vram Zerunyan points out, this model of contract cities “encourages the public and private sectors to jointly study experience and solve policy and public administration challenges.”²⁸ This independence from state authority and oversight of the needs of local communities clearly conforms to a civic republican model of land-use regulation, while partially embracing both localist and regionalist perspectives on municipal governance.

Illinois has essentially given up all authority and granted sovereignty to a several counties and municipalities. Further, municipal power of annexation is semi-unilateral, requiring only a petition meeting standard requirements without legislative approval and simple majority approval by those within the territory to be annexed.²⁹ Essentially, Illinois has embraced a civic republican model of regulation over municipalities, combined with an annexation model that reflects a libertarian perspective.

As shown herein, annexation and municipal incorporation laws vary from state to state. Segregation is exacerbated when cities have the ability, with little oversight, to exclude or include certain neighborhoods from their borders. Race-based movement between cities also occurs when involuntary displacement

24. Smith, *supra* note 20, at 428.

25. GA. CONST. art. IX, § II, para. II.

26. Frank Vram Zerunyan, *The Evolution of the Municipal Corporation and the Innovations of Local Governance in California to Preserve Home Rule and Local Control*, 44 FORDHAM URB. L.J. 217, 234 (2017) (footnote omitted).

27. *Id.* (footnote omitted).

28. *Id.* at 235.

29. See 65 ILL. COMP. STAT. 5/7 (2020).

results from gentrification.

V. GENTRIFICATION

Gentrification occurs when historically Black neighborhoods become overwhelmingly white as a result of private and public practices that reduce the availability of affordable housing.³⁰ Often, these neighborhoods were plagued by divestment for years by the government and businesses.³¹ White Flight further depleted the resources of these communities.³² When white people move back into these neighborhoods and businesses are incentivized to establish a presence there, property taxes increase.³³ In addition to the increased cost of living, the social and cultural fabric of the neighborhoods shifts away from their historic roots to accommodate the preferences of wealthier, white residents.³⁴ With racial segregation comes segregated school systems, better-resourced schools attended by those living in the wealthier neighborhoods, and property taxes to support these institutions.³⁵ Families with children who attend poorer-performing schools often live in neighborhoods that have experienced disinvestment and involuntary mobility. All of these factors negatively affect health outcomes. Gentrification is another legal practice, yet it creates neighborhoods antithetical to the purpose of laws passed to create integration and prohibit discriminatory housing practices. There are several quality-of-life consequences to segregation, with health being no exception.

VI. HEALTH AND HOUSING DISPARITIES

Social determinants play a significant role in our health.³⁶ Disparities in socioeconomic factors are twice as likely to predict health outcomes than health care.³⁷ Housing is an important factor in such determinations. Living in substandard housing and the surrounding environment can have adverse health effects. Segregation and a lack of affordable housing are also factors that contribute to poor health. The racial implications of all of these elements deepen racial health disparities and accounts in large part for people of color experiencing negative health outcomes at disproportionately high rates.

Communicable and chronic diseases thrive in poor housing environments,

30. Courtney Jones-Hall, *Housing Patterns, Academic Performance and School Choice: An Inquiry into the Relocation Experiences of African-American Families*, GA. S. ELECTRONIC THESES & DISSERTATIONS 1, 40 (2013).

31. *See, e.g., id.* at 64.

32. *Id.* at 60.

33. *See, e.g., id.* at 40.

34. *See id.* at 20.

35. *See id.* at 31.

36. Dayna Bowen Matthew, *Health and Housing: Altruistic Medicalization of America's Affordability Crisis*, 81 L. & CONTEMP. PROBS. 161, 166 (2018).

37. *Id.*

with poor ventilation and sanitation exacerbating these ailments.³⁸ These diseases include respiratory illnesses, neurological ailments, and a variety of other dysfunctions.³⁹ In many cases, asthma is attributable to mold, allergens, heating systems that are not up to date, and pests that are more prevalent in substandard housing.⁴⁰

Conditions outside of the home also affect health,⁴¹ which is why understanding neighborhoods and the racial implications of laws and policies that create them must be analyzed to holistically understand health disparities. Living near risk factors, such as landfills and highways, results in exposure to pollutants and adversely impacts health.⁴² Lower-income neighborhoods often suffer from a lack of green space, which reduces the ability to safely participate in outdoor recreational activities.⁴³ This reduced opportunity to be physically active can lead to obesity and other illnesses that can be prevented by engaging in a healthy lifestyle.⁴⁴ These low-income neighborhoods also have fewer healthy food options and a large number of unhealthy food options. The lifestyles of people who live in these communities are significantly impacted by these environmental factors, which drive health outcomes.⁴⁵

Racial residential segregation accounts for health disparities between white and Black populations.⁴⁶ Segregation can keep communities of color physically separated from quality-of-life assets, such as good schools, employment, and transportation, and can keep poverty, crime, and pollutants within the neighborhood's borders.⁴⁷ The mental health consequences of this separation and isolation include depression, anxiety, and stress.⁴⁸

More than 200,000 people are experiencing homelessness and living completely unsheltered in the United States.⁴⁹ This puts these individuals at very high rates of contracting an illness.⁵⁰ People experiencing homelessness suffer from higher rates of pneumonia, HIV, other infectious diseases, chronic illness, and psychotic disorders than those who are not homeless.⁵¹

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.* at 167.

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.* at 167-68.

48. *Id.* at 168.

49. ANDREW AURAND ET AL., NAT'L LOW INCOME HOUS. COAL., OUT OF REACH: THE HIGH COST OF HOUSING 1 (2020), https://reports.nlihc.org/sites/default/files/oor/OOR_2020.pdf [<https://perma.cc/PF6Z-XUVT>].

50. *Id.*

51. *See, e.g.*, COMM. ON HEALTH CARE FOR HOMELESS PEOPLE, INST. OF MED., HOMELESSNESS, HEALTH, AND HUMAN NEEDS 1 (1988).

Homelessness is especially dangerous in a pandemic, given the difficulties of quarantining and observing sanitary measures without having a home.⁵² In addition to the hundreds of thousands of people who are forced to live on the streets, over 350,000 people are living in shelters for people without homes.⁵³ There are also more than two million people who are living in overcrowded living situations.⁵⁴ These groups of people, though sheltered, are also at higher risk of COVID-19 exposure given that it is much harder to social distance in these situations.⁵⁵

The death of affordable housing is partly to blame for this. There are thirty-six affordable rental homes available for every 100 extremely low-income renters who are seeking such housing.⁵⁶ Due to the lack of affordable housing, 86% of extremely low-income renters cannot afford their rent, and 71% (close to eight million) of extremely low-income renters spend more than half of their incomes on housing costs.⁵⁷ Since federal housing funding reaches a mere 25% of eligible renters,⁵⁸ many people have no choice but to spend greater percentages of their income on housing. Housing is affordable when no more than 30% of household income is spent on the cost of living expenses.⁵⁹ When spending on housing exceeds this threshold, families are required to sacrifice money that would be spent on necessities, such as food and medical care.⁶⁰ People living in cost-burdened situations experience lower health outcomes because of these tradeoffs.⁶¹ Further, housing instability results from frequent moves, which is a necessary action as people seek affordable housing or are otherwise displaced. In particular, these frequent moves adversely impact the health of children.⁶²

People of color are more likely to live in unaffordable housing,⁶³ experience

52. AURAND ET AL., *supra* note 49.

53. *Id.*

54. *Id.*

55. *See id.*

56. *Id.*

57. *Id.*

58. Will Fischer & Barbara Sard, *Chart Book: Federal Housing Spending Is Poorly Matched to Need*, CTR. BUDGET & POL'Y PRIORITIES (Mar. 8, 2017), <https://www.cbpp.org/research/housing/chart-book-federal-housing-spending-is-poorly-matched-to-need> [<https://perma.cc/Q87B-F9QQ>].

59. *Defining Housing Affordability*, U.S. DEP'T HOUSING & URB. DEV., <https://www.huduser.gov/portal/pdredge/pdr-edge-featd-article-081417.html> [<https://perma.cc/CR39-TW36>] (last visited Mar. 13, 2021).

60. *Id.*

61. *Id.*

62. Kathryn Bailey et al., *Overcrowding and Frequent Moves Undermine Children's Health*, CHILD. HEALTHWATCH (Nov. 2011), https://childrenshealthwatch.org/wp-content/uploads/CrowdingMultipleMoves_brief_November2011.pdf [<https://perma.cc/H38B-FW7C>].

63. *Racial Disparities Among Extremely Low-Income Renters*, NAT'L LOW INCOME HOUSING COALITION (Apr. 15, 2019), <https://nlihc.org/resource/racial-disparities-among-extremely-low-income-renters> [<https://perma.cc/R7VR-MJ6K>].

homelessness,⁶⁴ live in poverty, and make disproportionately lower wages.⁶⁵ This compounds the negative health outcomes these communities face due to laws and policies that create and maintain racial segregation.

VII. CONCLUSION

Health disparities are preventable differences in the burden of disease and opportunities to achieve optimal health experienced by socially disadvantaged populations.⁶⁶ It is important to recognize that there are socioeconomic determinants of health that cause people of color to experience adverse health outcomes at much higher rates than white people because the implicit and explicit racial bias in housing laws and policies do not just perpetuate segregation but deepen these inequities and worsen instances of chronic disease and mental health ailments for communities of color.

64. Racial Disparities in Homelessness in the United States, NAT'L ALLIANCE TO END HOMELESSNESS (June 6, 2018), <https://endhomelessness.org/resource/racial-disparities-homelessness-united-states/> [https://perma.cc/9T3L-ED3G].

65. Valerie Wilson, *Racial Disparities in Income and Poverty Remain Largely Unchanged Amid Strong Income Growth in 2019*, ECON. POL'Y INST. (Sept. 16, 2020), <https://www.epi.org/blog/racial-disparities-in-income-and-poverty-remain-largely-unchanged-amid-strong-income-growth-in-2019/> [https://perma.cc/QV7U-EFY8].

66. *Adolescent and School Health*, CTR. FOR DISEASE CONTROL & PREVENTION (Nov. 24, 2020), <https://www.cdc.gov/healthyyouth/disparities/index.htm> [https://perma.cc/ET8G-Y96R].